



NATURAL RESOURCES BOARD
Districts #2&3 Environmental Commission
100 Mineral Street, Suite 305
Springfield, VT 05156-3168

December 12, 2019

Roger Jasaitis
Dummerston Zoning Administrator
zoning@dummerston.org

Subject: Jurisdictional Opinion #2-313 Grover– Dummerston

Dear Mr. Jasaitis:

I write in response to your request for a Jurisdictional Opinion as provided for in 10 V.S.A. § 6007 ("the request") as to whether "Grover Services" located at 141 Prospect View Drive in Dummerston requires an Act 250 permit. For reasons outlined below, it is my opinion the Project requires a land use permit. In the process of forming this opinion, I relied upon the documents presented by the Grovers at the Development Review Board ("DRB") hearing and the DRB hearing notes, photos, and decision.

I. Summary of Opinion

In summary, it is my opinion that Act 250 jurisdiction does attach to 141 Prospect View Drive because of the construction of improvements for a commercial purpose that have occurred there.

II. Facts and Documents

1. Kelley and Zachary Grover live at 141 Prospect View Drive, Dummerston, Vermont.
2. 141 Prospect View Drive in Dummerston is 32.3 acres.
3. Dummerston is a one-acre town for Act 250 jurisdictional purposes.
4. On February 20, 2019, the Grovers applied for and were denied a conditional use permit in the town of Dummerston to operate the home business Grover Services.
5. The type of business conducted is: property maintenance; excavation; trucking; landscaping; and firewood processing.
6. Grover Services employs four people who are not family members.
7. Employees arrive at 141 Prospect View Drive at 6:30am and leave for job sites at 7-7:30 am returning to 141 Prospect View Drive between 4:30 and 6pm.
8. During the time frame stated above, there is the operation of dump trucks, excavating equipment on trailers, and company pickup trucks.
9. The business has seven pieces of equipment and seven trailers including, but not limited to, dump trucks, pickup trucks, equipment trailers, and excavating equipment.
10. There are two-275 gallon fuel storage tanks on the property.
11. The town of Dummerston's site visit on April 23, 2019, revealed storage containers, a salt storage shed, excavation landfill, and a firewood business. Town permits had not been issued for these.
12. Storage of material on the property includes, but is not limited to: plastic drain pipe, culverts, lumber, mulch, salt, gravel and firewood in both log and processed length.

13. Neighbor Jill Green testified to the Town of Dummerston, that she has been impacted by the truck traffic, idling equipment, loading and unloading of material, noise, vibration, lightings, and her well water has been contaminated.
14. Kelley Grover emailed me to inform me that she and Zach will no longer be operating a home business at 141 Prospect View Drive.

III. Relevant Law

10 V.S.A. §6001(3)(A)(ii) “Development” means:

The construction of improvements for commercial or industrial purposes on more than one acre of land...

Act 250 Rule 2(C)(3):

‘Construction of improvements’ means any physical action on a project site which initiates development for any purpose enumerated in Rule 2(A), except for:

- (b) construction for a home occupation as defined in these Rules.

Act 250 Rule 2(C)(17):

‘Home occupation,’ solely for purposes of Rule 2(C)(3), means the use, by a resident, of a minor portion of the residence, including ancillary buildings, for an occupation or business:

- (a) that is customary in residential areas; and
- (b) that does not have a potential for significant impact under the criteria of 10 V.S.A. Section 6086(a)(1) through (10).

IV. Analysis and Conclusion

The facts collected and provided by the Town of Dummerston, reveal that there has been the construction and operation of a commercial business on a property that is larger than one acre. This construction and activity require a land use permit because it is development according to 10 V.S.A. §6001(3)(A)(ii). The statute allows an exemption from Act 250 jurisdiction for a “home occupation.” Act 250 Rules 2(C)(3) and (17). For a Project to satisfy the home occupation exemption, all three of the following conditions must be met: the resident must use only a minor portion of the residence, including ancillary buildings; the business must be customary in a residential area; and the Project must have no potential for significant impacts under the criteria of 10 V.S.A. §6086(a)(1) through (10) (Act 250).

I don’t have facts pertaining to what portion of the residence is being used for the business and I do not inquire further at this time because the Project clearly doesn’t meet the two other requirements of the Act 250 Rule 2(C)(17) Home Occupation definition, that is, the business is not customary in a residential area and the Project has the potential for significant impacts under the Act 250 Criteria. The neighbor testified to the Town of Dummerston that she has experienced impacts under traffic (Criteria 5 and 9K); idling equipment (Criterion 1 Air Pollution); noise and lighting (Criterion 8); and her well was impacted (Criterion 3 Impacts on Water Supply).

This Project requires a land use permit because it qualifies as development and does not meet the definition of home occupation under the Act 250 rules. Even if Kelley and Zachary Grover are no longer operating Grover Services at this location, Act 250 jurisdiction has been triggered and runs with the land. Therefore, the owner of the property must submit an Act 250 application addressing the improvements that have previously been undertaken. A link to the Act 250 application is found here: <https://nrb.vermont.gov/act250-permit>. Please submit a complete application by March 1, 2020.

V. Reconsideration or Appeal

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie Gile". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Stephanie Gile
District 2 Coordinator
Natural Resources Board
802-289-0597 / stephanie.gile@vermont.gov